

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JUSTICE ADDEAH DONKOR,

Petitioner,

v.

Civil Action No. 5:09CV14
(STAMP)

UNITED STATES IMMIGRATION,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Background

The pro se¹ petitioner, Justice Addeah Donkor, filed a writ of habeas corpus pursuant to 28 U.S.C. § 2241. He also sought leave to proceed in forma pauperis² and filed an application to proceed without prepayment of fees and affidavit with an attached ledger statement. This matter was referred to United States Magistrate Judge David J. Joel for report and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 83.09. On February 10, 2009, Magistrate Judge Joel issued a report and recommendation recommending that the petitioner's application to proceed without prepayment of fees be denied. The magistrate judge advised the parties that, pursuant to 28 U.S.C. § 636(b)(1)(C), any party may file written objections to his proposed findings and

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1237 (7th ed. 1999).

²"In forma pauperis" describes the permission granted to a poor person to proceed without liability for court fees or costs. Black's Law Dictionary 779 (7th ed. 1999).

recommendations within ten days after being served with a copy of the magistrate judge's recommendation. Neither party filed objections. For the reasons set forth below, this Court finds that the report and recommendation of the magistrate judge should be affirmed and adopted in its entirety.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Accordingly, because the petitioner has not filed objections, this Court reviews the report and recommendation of the magistrate judge for clear error.

III. Discussion

Based upon the petitioner's application, the magistrate judge found that the petitioner's account at the time he was incarcerated³ showed a balance of \$90.26, and that at the time this case was filed, the petitioner had an account balance of \$13.13. Moreover, the petitioner states in his application that he and his spouse have checking and savings in the amount of \$1,000.00 and own two vehicles that are worth approximately \$30,000.00 combined.

³The petitioner has only been incarcerated since January 9, 2009.

Because the filing fee for a habeas corpus action is only \$5.00, therefore, this Court concludes that the magistrate judge's findings are not clearly erroneous. Accordingly, the petitioner's request to proceed without prepayment of fees is denied.

IV. Conclusion

Because the plaintiff has not objected to the report and recommendation of the magistrate judge, and because this Court finds that the magistrate judge's recommendation is not clearly erroneous, the ruling of the magistrate judge is hereby AFFIRMED and ADOPTED in its entirety. Accordingly, for the reasons set forth above, the petitioner's request for leave to proceed in forma pauperis is DENIED. Further, it is ORDERED that the petitioner pay the full filing fee on or before April 17, 2009. Failure to pay the full filing fee on or before April 17, 2009, will result in dismissal of the petitioner's complaint.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this memorandum opinion and order to the pro se petitioner by certified mail and to counsel of record herein.

DATED: March 16, 2009

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE